

Times Colonist (Victoria)

Policing the police; Who's watching the cops?

Sun Nov 7 2010

Page: D1 / Front

Section: Monitor

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Source: Times Colonist

Illustrations: Photo: Police Video Via Global Tv / Top: Vancouver police drag an intoxicated Frank Paul away from the cellblock before leaving him outdoors to freeze to death in an alleyway.; Colour Photo: Courtesy Paul Pritchard / Above: RCMP subdue Robert Dziekanski at the Vancouver airport after Tasering him repeatedly.; Colour Photo: Arlen Redekop, Postmedia News / Vancouver lawyer Cameron Ward holds an eagle feather given to him during the Frank Paul inquiry in 2008. Ward, the lawyer representing the United Native Nations Society, which represents 40,000 aboriginal people not living on native Indian reserves, said at the inquiry that in B.C. history, no police officer has ever faced a criminal charge arising from the death of an aboriginal person in police detention or custody.; Colour Photo: Jason Payne, Postmedia News / RCMP E Division assistant commissioner Al Macintyre holds pictures of Const. Paul Koester, taken minutes after the shooting of Ian Bush in the Houston RCMP detachment in 2005. Macintyre said the photos showed wounds to Koester from fighting with Bush, which justified the use of deadly force.

Frank Paul, drunk and barely conscious, was left to freeze in an alleyway by Vancouver police officers on Dec. 5, 1998.

Ian Bush was shot in the back of the head in an interrogation room by an RCMP officer in northern B.C. on Oct. 29, 2005.

Polish immigrant Robert Dziekanski was Tasered five times by four RCMP officers on Oct. 14, 2007, after he spent hours wandering the Vancouver International Airport looking for his mother.

The officers involved in all three of these cases were investigated by other police officers and cleared of wrongdoing. That's because in British Columbia, when people are injured or killed while in police custody, other police officers determine whether misconduct has occurred.

These and other high-profile police-involved deaths has led to widespread outcry and two public inquiries -- the Davies Commission in 2009 and the Braidwood Inquiry in 2010 -- that strongly recommended police stop investigating themselves.

As a result, B.C. Attorney General Mike de Jong announced in June that the government would create an independent, civilian-led body to investigate injuries or deaths involving municipal police and RCMP. The Independent Investigations Office is scheduled to be up and running by summer 2011.

Many say it's long overdue.

SHOULD POLICE INVESTIGATE THEMSELVES?

British Columbia is not the first province to create a civilian-led organization to investigate incidents in which people have been harmed or killed in police custody. Ontario and Alberta already have such bodies and Manitoba and Nova Scotia are following suit. None of the other provinces has a civilian oversight body.

Ontario's Special Investigations Unit was created after several controversial police shootings of black men in the late 1980s. Director Ian Scott said civilian oversight bodies typically arise after a police

incident that incites public outrage.

"You see this pattern of real horror shows that force change," he said. "Something horrible happens and we say 'We've got to do something about this.'"

That point in B.C. was the fatal Taser of Dziekanski by four RCMP officers in 2007. A public inquiry led by retired justice Thomas Braidwood heard evidence from the officers that was largely at odds with a video of the incident. Braidwood's scathing report found the four Mounties discussed the incident together before giving a statement to the Integrated Homicide Investigation Team, a group made up of RCMP and municipal police officers that investigates in-custody deaths or injuries on the Lower Mainland. The police probe had exonerated the four RCMP officers in 2008.

"It was a case of the police investigating themselves, and many members of the public are understandably suspicious of such investigations," Braidwood wrote in June of this year, when the final stage of his report was made public. His strong recommendation: a process that would involve civilians in investigating police use of force.

But Braidwood was not the first to suggest a civilian oversight body.

The Davies Commission, which probed the 1998 death of Frank Paul in Vancouver, came to the same conclusion in 2009. Retired justice William Davies found that Vancouver police homicide detectives conducted an "inadequate" investigation into Paul's death before they cleared their department colleagues of criminal charges.

The death of Ian Bush in northern B.C. in 2005 had also helped galvanize public opinion. The

22-year-old was shot in the back of the head at the RCMP detachment in Houston on Oct. 29, 2005, after being arrested for having an open beer at a hockey game. He was alone with the officer who shot him. The officer said he fired in self-defence.

An internal RCMP inquiry and a second inquiry by the Commission for Complaints Against the RCMP cleared the officer of wrongdoing.

A comprehensive study by the B.C. Civil Liberties Association at the end of October revealed B.C. has the highest number of jail or police-involved deaths per year of any of the six provinces and territories for which numbers were available. B.C. has had 267 police-involved deaths over the last 15 years -- twice as many deaths in Ontario, which has three times our population.

Those grim statistics underscore the urgency for a civilian-led investigative unit in B.C., said David MacAlister, author of the report and director of the Institute for Studies in Criminal Justice Policy at Simon Fraser University.

The B.C. government has released few details about the new Independent Investigations Office other than saying the body will be headed by a civilian with no police background.

In an email, de Jong said, "The ministry will be working with a number of stakeholders, including the B.C. Association of Chiefs of Police, who will be involved in development and

implementation of the IIO."

In his report, Braidwood recommended a mixed model of former police officers who haven't served in B.C. in the last five years and civilian investigators for the first five years and after that, a purely civilian unit. The two existing civilian oversight agencies in Canada operate quite differently.

Ontario's Special Investigations Unit is headed by a civilian -- Scott spent most of his life as a Crown prosecutor -- and staffed by a mix of civilians with investigative training, former police officers and forensics experts. There are 69 investigators: 14 full-time, 38 part-time, 10 part-time forensic investigators and seven supervisors.

The unit investigates any death or serious injury involving police, which can mean anything from a person breaking a bone while being chased by officers to a police shooting. It prohibits investigators from probing departments where they were previously employed.

In Alberta, police-involved injuries or deaths as well as police corruption cases are handled by the Alberta Serious Incident Response Team. The team, like Ontario's, is led by a civilian -- former Crown prosecutor Clifton Purvis -- but it is staffed by former police officers and seconded police officers, which includes serving RCMP, municipal police and military police officers.

Purvis says there are no civilians involved in the actual investigations because such investigations simply cannot be done by people without years of police experience.

"It's a far stretch to say you can get ex-insurance investigators or ex-meat and poultry investigators to do this kind of work," he said in an interview. "Certainly, if you hired a bunch of teachers to do this work, they would be very independent. But they wouldn't be nearly as effective as former homicide detectives."

The Alberta unit only investigates matters it considers in the public interest. Purvis said it probably wouldn't investigate if a suspect jumped from a balcony or someone broke an arm while being handcuffed, for instance, but would certainly probe an in-custody death.

As a consequence, the Alberta team is considerably smaller than Ontario's, with about 14 full-time investigators and four part-time investigators. The team handles a fraction of the cases the Ontario unit does -- about 30 files a year, which is what the Ontario organization might tackle in a month.

Half of the Alberta files are corruption cases, which can include anything from an officer doing drugs to accessing child pornography. The Alberta unit often contracts out forensic work to police departments not linked to the investigation.

Purvis says he does not see a problem with investigators probing their former employer. However, he won't have a Mountie or ex-Mountie lead an RCMP investigation, for instance. The team always includes officers from three different agencies, Purvis said.

Victoria police chief Jamie Graham said he favours the seconded officer model, echoing Purvis's view that police officers

are best equipped to conduct a thorough investigation.

"I have never handled a criminal investigation [into a police officer] where I'm afraid to hold someone to account," he said. Graham said the perception that the police can't investigate police is created by the media and isn't representative of the public.

At the end of October, Nova Scotia announced the structure of its own civilian-led investigative unit, called the Serious Incident Response Team, which will be in operation by late 2011. It will have a civilian director and seven seconded officers to conduct the investigations, which will be overseen by two provincial civilian investigators. Like the Alberta and Ontario models, the civilian director has the final say in determining wrongdoing.

Manitoba is set to unveil a civilian oversight body of its own following an inquiry into the death of Crystal Taman, who died after her car was struck by a drunk off-duty police officer. That province will likely follow Alberta's lead and staff the Independent Investigations Unit with serving cops or ex-cops.

Paul Cormier, executive director of Ontario's Special Investigations Unit, spent 33 years working for the Halton Regional Police Service. He said civilians on the Ontario unit are trained in evidence gathering, interviewing techniques and major case management and can be highly effective when paired with experienced former major crime detectives.

However, Cormier said a civilian agency with no police officers, as recommended

by Braidwood, might not be wise.

"You have to have that police knowledge and understanding," he said.

If B.C. is on the path to having the first completely civilian police oversight body, Tom Stamatakis said it's for all the wrong reasons.

The president of the B.C. Police Association said he worries the government will be more concerned with appeasing the public perception that police can't investigate other officers, rather than staffing the unit with competent investigators.

In 2004, England and Wales set up a completely civilian oversight body called the Independent Police Complaints Commission, which supervises internal investigations into police misconduct and conducts its independent probes into police-involved deaths or serious injury.

Perhaps the most sophisticated model of police oversight in the world can be found in Northern Ireland, where police misconduct and in-custody deaths or injuries are investigated by the Office of the Police Ombudsman. The office has an annual budget of \$18 million and 150 employees investigate 3,000 complaints a year.

The office is staffed by civilians, former police and seconded police officers and led by Al Hutchinson, a former RCMP assistant commissioner. Hutchinson has said that mix of backgrounds results in "a body that is competent, professional, fair and accountable."

Former Ottawa police chief Vince Bevan,

who provided input to the Ontario unit, said Braidwood's recommendation for an entirely civilian unit within five years is over-ambitious.

He said the Ontario body had problems gaining respect and legitimacy as the civilians on the team learned the ropes of conducting an investigation.

"Some of their earlier cases were just laughed out of court," he said. "There was the thought they measured their success by the number of charges laid."

That led to a number of lawsuits from officers claiming malicious prosecution and heightened police officers' mistrust of the unit.

The body has since raised its standards for investigators and two decades later has evolved into a highly effective organization, Bevan said.

"If [B.C.] chooses a model that's like the Alberta model, I think there's going to be some concern about that," he said, referring to the seconded and former police officers in the Alberta unit.

One of the biggest obstacles to creating an effective civilian oversight body in British Columbia will be cost. De Jong would not discuss the budget for the Independent Investigations Office, but many worry that in the current economic climate there won't be enough money to fund a model as sophisticated as Ontario's, which has a

\$7-million annual budget. Alberta's unit has an annual budget of

\$3.4 million. The team in Nova Scotia, which has less than one-quarter the

population of British Columbia, will have an annual budget of \$800,000 when it launches next year.

If the recent experience of the Office of the Police Complaint Commissioner is any indication, the government is not willing to shell out much money for police complaints.

Commissioner Stan Lowe's request for more funding was turned down by MLAs last month, despite his insistence that his staff isn't able to keep up with an expanded workload caused by changes to the Police Act.

Vancouver police chief Jim Chu suggested recently the Independent Investigations Office should incorporate the functions of the police complaint commissioner and investigate all complaints against police, which would swell the cost dramatically.

Critics argue the cost of setting up a properly resourced civilian oversight body will be far less than the millions the B.C. government has spent on public inquiries.

MacAlister said B.C. can also save a considerable amount of money by learning from Ontario's mistakes.

"We don't have to go through the same lengthy process that Ontario went through.... If we know the kind of problems that are going to be faced, presumably we can head those off."